



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION
Case #: MTI - 173317

PRELIMINARY RECITALS

On March 30, 2016, the above petitioner filed a hearing request under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to challenge a decision by the Milwaukee Enrollment Services regarding Medical Assistance. The hearing was held on April 26, 2016, by telephone.

The issues for determination are whether jurisdiction is present to review Petitioner's appeal as to Medicaid/ BadgerCare+ overpayment claims due to the application of the doctrines of claim and issue preclusion and whether the appeal is timely as to an October 11, 2103 tax intercept notice.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. This appeal was filed to contest several Medical Assistance/BadgerCare+ overpayment claims in the amount of \$19,205.96. The claim numbers are:

[REDACTED]
[REDACTED]



3. The Medicaid/BadgerCare+ overpayment claims noted at Finding # 2 were the subject of an earlier appeal by Petitioner. That appeal was filed by Petitioner on March 28, 2013 and a hearing was held on April 25, 2013. A decision was issued by the Division of Hearings and Appeals on April 30, 2013 that dismissed the appeal.
4. Petitioner was sent a tax intercept notice dated October 11, 2013 that informed her that any tax refund that she might have could be intercepted to repay the claims noted at Finding # 2. The notice was sent to Petitioner at the above address and does contain appeal instructions.
5. This appeal was filed March 30, 2016.

DISCUSSION

There are two components to this appeal. Petitioner is challenging the overpayment determination as well as the tax intercept.

As for the overpayment claims themselves - claim preclusion (formerly known as “res judicata”) requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as “collateral estoppel”) requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550.

Petitioner has had her "day in court" on the merits of her appeal about the overpayments involved here. The instant appeal claim is precluded by that result, under both the doctrines of claim preclusion and issue preclusion. This matter has been decided in a final decision, and that result is binding as a matter of fact and law.

As for the tax intercept, this appeal is not timely. An appeal of a tax intercept notice must be filed with the Division of Hearings and Appeals within 30 days of the tax intercept notice. See Wis. Stats. § 49.85(3)(b)2. The tax intercept notice involved here was sent to Petitioner at the above address. It contained appeal instructions. This appeal was not filed until March 30, 2016.

Finally, I also note that there is a Milwaukee County Circuit Court judgement in case number [REDACTED], dated September 3, 2013, against Petitioner in the amount of \$19,205.96 for the claims noted above.

CONCLUSIONS OF LAW

- 1) That the instant appeal, Division of Hearings and Appeals case # MTI/173317 is precluded by the doctrines of claim preclusion and issue preclusion as the claim and issue in the instant appeal was decided in a final decision in Division of Hearings and Appeals Case No. MOP/148377, dated April 30, 2013; jurisdiction is not present to review the merits of the agency overpayment determination again.

2) That this appeal is untimely as to the October 11, 2013 tax intercept notice.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

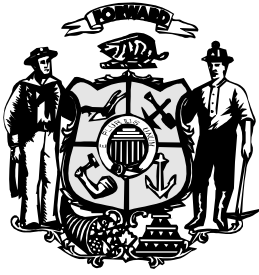
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of July, 2016

\s _____
David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 22, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability